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In the Matter of the Compensation of  
**MATTHEW E. OWENS, Claimant**  
WCB Case No. 23-00104C  
**ORDER DISAPPROVING CLAIM DISPOSITION AGREEMENT**  
Unrepresented Claimant  
SAIF Legal Salem, Defense Attorneys

Reviewing Panel: Members Ousey, Curey, and Wold. Member Curey dissents.

On January 17, 2023, the Board received the parties' Claim Disposition Agreement (CDA). In consideration of the payment of \$2,494.26, Mr. Owens (*i.e.*, claimant), *pro se*,<sup>1</sup> releases certain rights to future workers' compensation benefits, except medical services-related benefits, for his compensable injury. Under these particular circumstances, we disapprove the proposed disposition as unreasonable as a matter of law. *See* OAR 438-009-0020(4)(b).

On February 8, 2023, the Board wrote the parties requesting clarification of the CDA, including whether Mr. Owens's accepted knee conditions (left knee strain, MCL sprain, ACL tear, and medial meniscus tear) have required surgery and, if so, what type(s) of surgery(ies). On February 16, 2023, after receiving additional information concerning his left knee surgery from the SAIF Corporation, the Board wrote to the parties again, seeking answers to questions concerning Mr. Owens's return to work, his doctor-provided work restrictions, and whether his surgeon had advised as to future surgical intervention. Mr. Owens reported that he had not fully returned to his at-injury job duties, that he was on light duty with a knee brace, and that he did not discuss with his treating surgeon whether future surgery was indicated.

Based on the information presented, we find that Mr. Owens underwent left knee surgery (arthroscopy with medial meniscus repair, ACL repair with quadriceps tendon autograft, and lateral meniscal resection and repair) in May 2022, which resulted in postoperative diagnoses of left ACL tear, medial meniscus

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<sup>1</sup> *Pro se* means "for himself." Because Mr. Owens is not represented by an attorney, he may wish to consult the Ombuds Office for Oregon Workers, whose job it is to assist injured workers in such matters. He may contact the Ombuds Office, free of charge, at 1-800-927-1271, or write to:

DEPT OF CONSUMER & BUSINESS SERVICES  
OMBUDS OFFICE FOR OREGON WORKERS  
PO BOX 14480  
SALEM OR 97309-0405

tear, and “other tear of lateral meniscus of left knee.” He was placed on an “ACL with meniscus repair protocol”; *i.e.*, provided crutches with his knee put in an ACL knee brace locked in full extension.

At a follow-up appointment in October 2022, Mr. Owens’s surgeon noted that he had returned to work, but in a “limited fashion.” The surgeon advised him not to return to his full “bar bouncing” duties. He was released to return to work with an ACL sports brace and prohibited from any situations that would put him in physical confrontations with bar patrons, as well as any activities that involved cutting or pivoting of the knee. The surgeon noted that he wanted to see Mr. Owens for a follow-up appointment in six weeks.

SAIF asserts that the only accepted conditions are left knee strain, MCL sprain, ACL tear, and medial meniscus tear, and that the procedure performed on the unaccepted condition (*i.e.*, complex tear of the lateral meniscus with vertical and horizontal components) would likely not entitle Mr. Owens to a permanent disability award because it “appeared preexisting.” Thus, it reportedly valued the claim only for the possibility of a partial medial meniscus resection totaling 2 percent whole percent impairment. Yet, SAIF has not considered the potential for range of motion loss, ACL instability (as Mr. Owens remains in a knee brace), or “chronic condition” impairment values (considering the work restrictions mandated by the attending physician in releasing Mr. Owens to his regular work, as well as the physician’s prescription for a knee brace), which would appear to be reasonably foreseeable. Moreover, SAIF has not issued a denial for either the lateral meniscus condition or for a “combined condition” involving the otherwise compensable injury.<sup>2</sup>

Under such circumstances, consistent with the rationale expressed in *Caren v. Providence Health Sys. Or.*, 365 Or 466, 486-87 (2019), and *Johnson v. SAIF*, 369 Or 569, 600-01 (2022), the current record reflects a potential whole person permanent impairment award for range of motion limitations, surgery, instability findings, and a “chronic condition” value, which would well exceed the \$2,494.26 in proposed CDA proceeds.

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<sup>2</sup> Pursuant to ORS 656.236(1)(a), parties may dispose of any and all matters potentially arising out of a claim (with the exception of medical service-related benefits), subject to such terms and conditions as the Board may prescribe. “The [legislature’s use] of the word ‘potentially’ means that a CDA resolves all matters that, in the future, could arise out of a claim, not merely the matters currently known to arise out of a claim.” *Rash v. McKinstry Co.*, 331 Or 665, 673 (2001); *Stefan R. Cammann*, 64 Van Natta 2401, 2402 (2012). Here, the present record reflects the possibility that Mr. Owens’s left knee lateral meniscal condition is related to his compensable claim, which involved a left knee injury. Moreover, the conditions accepted are indicia of a significant injury that may require periods of future disability.

Moreover, although Mr. Owens has returned to work with his employer-at-injury (as a bouncer at a bar), his attending physician has restricted him from engaging in physical activities, such as removing patrons from the premises or performing any activities that involve cutting or pivoting. In addition, the attending physician has prescribed a knee brace to support Mr. Owens's knee for his accepted ACL condition. Therefore, despite the absence of a closing examination and "medically stationary" determination for "claim closure" purposes, the present record provides reasonable support for a work disability award. Such an award would be comprised not only of Mr. Owens's whole person permanent impairment, but would also include his "social/vocational/adaptability" factors. ORS 656.214(1)(e).

Thus, this "pre-closure" record reasonably reflects the potential of not only a whole person permanent award that significantly exceeds an award commensurate with a 2 percent impairment value, but also a work disability award that would (at a minimum) double the potential impairment award. Given these circumstances, we are persuaded that the proposed consideration for the CDA is unreasonable as a matter of law on its face. Accordingly, we disapprove the CDA. ORS 656.236(1)(a)(A); *see, e.g., Bradford Sexton*, 49 Van Natta 183, 183-84 (1997) (CDA was unreasonable as a matter of law on its face because it released the surviving spouse's substantial monthly benefit, which involved a minimum value of \$34,414.80, in exchange for a consideration of \$1); *see also Louis R. Anaya*, 42 Van Natta 1843, 1844 (1990) (a CDA must be rejected under ORS 656.236(1)(a) if it exceeds the bounds of existing statutes, rules or applicable case law, or if a reasonable fact-finder could only conclude that the agreement was unreasonable as a matter of fact).

In reaching this conclusion, we recognize that Mr. Owens expresses no dissatisfaction with this proposed CDA. Nonetheless, our statutory review authority necessitates the application of specified criteria before reaching a determination that a proposed CDA is approvable.<sup>3</sup> Here, for the reasons

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<sup>3</sup> The legislative history supports the proposition that our regulatory oversight is mandated to ensure that CDAs reflect a fair and informed settlement of a worker's nonmedical workers' compensation rights. *See, e.g.,* Testimony of James Redman, Joint Interim Special Committee on Workers' Compensation (SB 1197), May 3, 1990, tape 1, side A. Consistent with this directive, we continue to perform our "oversight" role, reviewing CDAs to determine, among other terms and conditions, that the proposed amount flowing from the carrier to the claimant represents a tangible, valuable benefit in return for his/her release of future "non-medical service-related" compensation. *Cammann*, 64 Van Natta at 2402 n 2.

expressed above, we conclude that this CDA (which involves an unrepresented claimant) is unreasonable as a matter of law. Consequently, in accordance with our statutory mandate, we are obligated to disapprove the proposed CDA. ORS 656.236(1)(a)(A).

Finally, we also acknowledge that some of our reasoning is based on varying degrees of speculation. Yet, such an analysis is necessary because the parties have presented a “pre-closure” CDA for our review under ORS 656.236. Were we considering a proposed CDA that was submitted after claim closure (preferably including an Order on Reconsideration), our decision regarding such an agreement may have differed from this particular disapproval.

Because the proposed disposition has been disapproved, SAIF shall recommence payment of any benefits that were stayed by submission of the proposed disposition. *See* OAR 436-060-0150(4)(a)(K) and (5)(a)(E).

The parties may move for reconsideration of the final Board order by filing a motion for reconsideration within 10 days of the date of mailing of this order. OAR 438-009-035(1).

**IT IS SO ORDERED.**

Entered at Salem, Oregon on March 15, 2023

Member Curey, dissenting.

Given the limited information available to me at this time, I do not find the proposed CDA unreasonable as a matter of law. ORS 656.236(1)(a)(A). Therefore, I respectfully dissent.